

No. 14518

United States
Court of Appeals
for the Ninth Circuit

NAT YANISH,

Appellant,

vs.

BRUCE G. BARBER, District Director, Immigration
and Naturalization Service,

Appellee.

Transcript of Record

Appeal from the United States District Court for the Northern
District of California, Southern Division

FILED

MAY - 6 1955

PAUL P. O'BRIEN, CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

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In the United States District Court for the Northern District of California, Southern Division

No. 29013

NAT YANISH,

Petitioner,

vs.

BRUCE G. BARBER, District Director, Immigration and Naturalization Service,

Respondent.

ORDER TO SHOW CAUSE

The petitioner herein having heretofore filed his petition that the respondent Bruce Barber be held in contempt, and the mandate of the Court of Appeals for the Ninth Circuit in this cause (No. 13,836 in the records of the said Court of Appeals) having been spread upon the record of this Court, and pursuant to the said mandate, and good cause appearing therefor,

It Is Hereby Ordered that the respondent Bruce Barber be and appear before this Court on the 9th day of June, 1954, then and there to show cause if any he have why this Court should not:

(1) Hold said respondent in contempt of court for violation of that certain permanent injunction heretofore granted on July 28, 1950, in the within cause, by requiring and demanding of petitioner Nat Yanish a bond conditioned in terms other than those under which petitioner was at liberty pursuant to the said prior permanent injunction of this Court and by imprisoning the petitioner for failure

to comply with the said demands and requirements;

(2) Hold said respondent in contempt for violation of the said permanent injunction by threatening to imprison and by imprisoning the petitioner Nat Yanish;

(3) Impose upon said respondent such a fine as will reasonably compensate petitioner for his damages suffered as a consequence of the respondent's said acts, including reasonable costs and attorneys fees incurred by petitioner as a consequence thereof.

Done in Open Court this 26th day of May, 1954.

/s/ GEORGE B. HARRIS,

United States District Judge

[Endorsed]: Filed May 26, 1954.

[Title of District Court and Cause.]

ORDER

The matter of the return to the order to show cause in the above matter having come on for hearing, and evidence having been introduced and argument heard, and the court being fully advised in the premises finds that respondent was on March 9, 1953, in technical contempt of the order of Judge Lemmon dated July 20, 1950, enjoining respondent from imposing conditions in a delivery bond, when he notified petitioner that conditions would be imposed; that respondent was acting in good faith under what he thought was the applicable pro-

visions of the McCarran Act (Immigration and Nationality Act of 1952, Public Law 414, effective December 24, 1952, 8 USC 1101 et seq.) and by written direction of his superior officer, the Commissioner of Immigration and Naturalization in Washington; that at the time petitioner was taken into the custody of respondent on March 17, 1953, his status under the provisions of Public Law 414 had changed in that on March 11, 1953, the order for deportation of petitioner became final and that he was so notified on March 16, 1953; that on March 16, 1953, a judge of this court declined to entertain petitioner's petition herein and to issue an order to show cause, and that the Court of Appeals for the Ninth Circuit reversed the said order of the District Judge and directed that the order to show cause issue; upon the foregoing:

It is ordered, adjudged, and decreed that no sanctions be imposed upon respondent, nor reparation be awarded to the petitioner.

Dated: July 12, 1954.

/s/ O. D. HAMLIN,

United States District Judge

[Endorsed]: Filed July 13, 1954.

[Title of District Court and Cause.]

RETURN TO ORDER TO SHOW CAUSE

Comes now Bruce G. Barber, District Director, Immigration and Naturalization Service, San Fran-

.

cisco District, by and through his attorneys, Lloyd H. Burke, United States Attorney, and Charles Elmer Collett, Assistant United States Attorney, and for cause why he should not be held in contempt of this Court, admits, denies and alleges as follows:

I.

Jurisdiction is for the Court's determination.

II.

Admits the allegations in paragraph II of the petition.

III.

Admits the allegations in paragraph III of the petition.

IV.

Admits the allegations contained in paragraph IV of the petition.

V.

Admits the allegations contained in paragraph V of the petition.

VI.

Admits the allegations contained in paragraph VI of the petition. Respondent alleges that on March 11, 1953 the order of deportation of petitioner became final and that petitioner received notice thereof on March 16, 1953.

VII.

Denies the allegations contained in paragraph VII of the petition.

VIII.

Admits the allegations contained in paragraph VIII of the petition.

IX.

Petitioner failed to post bond as required and following the order of this Court denying the relief prayed for was taken into custody on March 17, 1953.

X.

Admits the allegations contained in paragraph X of the petition.

XI.

Denies the allegations of paragraph XI of the petition. Respondent alleges that the order of this Court dated July 28, 1953 restrained the respondent from imposing conditions in the said immigration bond which were not authorized by the then existing Statutes. Public Law 414, the Immigration and Nationality Act of 1952, became effective December 24, 1952. Section 242 of said Act vested the Attorney General of the United States with authority to impose conditions in such bond. Acting under the authority and by direction of the Attorney General of the United States respondent sought to impose conditions prescribed by the said Attorney General in the case of this petitioner. Respondent acted solely under the authority, direction and prescription of the said Attorney General and in accordance with Public Law 414 (66 Stat. 163).

Wherefore Respondent prays that the order to

show cause be discharged and the relief prayed for be denied.

Dated: June 16, 1954.

LLOYD H. BURKE,

United States Attorney

/s/ By CHARLES ELMER COLLETT,

Assistant United States Attorney

[Endorsed]: Filed June 16, 1954.

[Title of District Court and Cause.]

NOTICE OF APPEAL

Appeal is hereby taken from the Order made herein on July 12, 1954, and entered on July 13, 1954, in the above cause, insofar as said Order ordered, adjudged and decreed that no sanctions be imposed upon Respondent Bruce G. Barber, and insofar as said Order ordered, adjudged and decreed that no reparation be awarded to petitioner, Nat Yanish.

Dated: August 9, 1954.

ALLAN BROTSKY,

LLOYD E. McMURRAY,

BENJAMIN DREYFUS,

FRANCIS J. McTERNAN, JR.,

/s/ By FRANCIS J. McTERNAN, JR.,

Attorneys for Petitioner

[Endorsed]: Filed August 10, 1954.

[Title of District Court and Cause.]

DESIGNATION OF RECORD ON APPEAL

Comes now appellant Nat Yanish and designates the record on appeal to the Court of Appeals for the Ninth Circuit from the decision of the above-entitled Court dated July 12, 1954, entered on July 13, 1954, in the above cause, to wit, the entire record in said cause, as follows:

1. The order to show cause issued by the District Court herein on May 26, 1954.

2. The return to the order to show cause, dated and filed herein June 16, 1954.

3. The order of said District Court dated July 12, 1954, and filed herein July 13, 1954.

4. The record of oral proceedings taken before said District Court on June 30, 1954.

5. All exhibits offered, whether received or rejected.

6. Notice of appeal filed herein August 10, 1954.

7. This designation of record on appeal.

Dated: August 27, 1954.

GLADSTEIN, ANDERSEN &
LEONARD,

LLOYD E. McMURRAY,
BENJAMIN DREYFUS,
FRANCIS J. McTERNAN, JR.,

/s/ By LLOYD E. McMURRAY,

Attorneys for Petitioner-Appellant

Acknowledgment of Service attached.

[Endorsed]: Filed August 27, 1954.

[Title of District Court and Cause.]

CERTIFICATE OF CLERK

I, C. W. Calbreath, Clerk of the United States District Court for the Northern District of California, do hereby certify that the foregoing and accompanying documents and exhibits, listed below, are the originals filed in this Court in the above-entitled case and that they constitute the record on appeal herein as designated by the attorney for the appellant:

Order to show cause.

Return to order to show cause.

Order.

Notice of Appeal.

Designation of record on appeal.

Petitioner's exhibits 1, 2, 3, 4 and 5.

Respondent's exhibit A.

In Witness Whereof, I have hereunto set my hand and affixed the seal of said District Court this 17th day of September, 1954.

[Seal]

C. W. CALBREATH,
Clerk

/s/ By WM. C. ROBB,
Deputy Clerk

[Title of District Court and Cause.]

ORDER EXTENDING TIME TO FILE
RECORD ON APPEAL

Good cause appearing therefor,

It Is Hereby Ordered that the time within which plaintiff-appellant may prepare and docket the record on appeal herein is hereby extended to and including October 18, 1954.

Dated: September 17, 1954.

/s/ EDWARD P. MURPHY,
United States District Judge

[Endorsed]: Filed September 17, 1954.

In the United States District Court for the Northern District of California, Southern Division

No. 29013

NAT YANISH, Plaintiff,

vs.

BRUCE BARBER, et al., Defendant.

TRANSCRIPT OF PROCEEDINGS

June 30, 1954

Before: O. D. Hamlin, Judge.

Appearances: For Plaintiff: Lloyd McMurray, Esq. For Defendant: C. Elmer Collett, Esq., Asst. United States Attorney. [1*]

* Page numbers appearing at top of page of original Reporter's Transcript of Record.

The Clerk: Yanish vs. Barber; Order to show cause. [2]

* * * * *

The Court: I think counsel could stipulate as to what the facts are very briefly here today. I think I am familiar with the facts from reading the file.

Mr. McMurray: It is my view that we should put in evidence showing the results of the contempt on the plaintiff, the costs to him, and all the incidents of it, which could not be stipulated to by counsel, I am sure.

The Court: Why not? There is no dispute as to what happened, is there counsel?

Mr. MacMurray: I do not think so.

The Court: Why can't we go ahead this morning?

Mr. McMurray: I can go ahead, your Honor, if I may have leave to complete the evidence at a later date. I wanted to have an expert witness here as to one aspect of the matter.

The Court: As to what aspect do you want an expert?

Mr. McMurray: As to the value of the legal services or [3] the reasonable cost of the legal services involved on behalf of the plaintiff, since I understand that that is properly included.

The Court: Counsel, I will state now that I would not be inclined to award any legal services, so you may know the Court's position.

Mr. McMurray: Your Honor, I have found no authority indicating that the plaintiff in this case,

Mr. Yanish, would not be entitled to it. In fact, the cases indicate that he is entitled to the costs or reasonable costs of his expenses for attorneys' services, and in this case, your Honor, that is a very substantial matter. It involved the filing of two actions in the District Court here, taking those appeals, going to the Justice of the Supreme Court for bail, arguing motions in the District Court, and arguing the case in chief and also motions in the Court of Appeals. It involved a great deal of work, a considerable amount expense, and I should like, if I may, to submit some authority to your Honor on this point if there is any doubt. It had not occurred to me that it was in doubt. The original provision asked that the defendant be held in contempt of court, and it is one of the things that has been most important in the litigation, that by his act the respondent, Barber, has caused Yanish to procure attorneys to represent him in three different courts and to argue and brief some very difficult and serious questions of law. [4]

* * * * *

Mr. Collett: If the Court please, I have two matters that were set before Judge Roche. I did not know what your Honor was going to do this morning. I took it that the matter would be submitted and you would make your ruling. Likewise we have submitted a line of authority with regard to the responsibility of a government official acting within the scope of his employment, at the direction of his superior officer, and not being liable for damages, even though your Honor has held him

in technical contempt as such. The record here is clear that he acted in accordance with the authority of the Attorney General and by direction of the Attorney General, which is uncontroverted.

We have also set forth the sequence of facts, which show that at the time the actual petition or application was made before this Court to adjudge the district director in contempt of court, his status at that point changed and he was on that day subject to deportation. So any matter pertaining to what counsel was contending relates solely and exclusively to the period from March 9 until March 16, at which time the petition was filed. During that interim, even though the original letter which was sent, as Your Honor states, was a technical contempt, on March 16 he was then subject to deportation and the matter was an entirely different proceeding from there on. I think that has to be determined by your Honor, but on both [5] of those grounds, although you say there was a technical contempt, I think the holding in addition should be that there has been no damage, and even if there were, it is *diminimis* and, second, the district director as an official, having acted in the course and the scope of his employment and direction of his superior officer, is not responsible for any such damage.

Mr. McMurray: Your Honor, I would like to reply to that, if I may, briefly. First of all, there has been no showing here and no evidence here that the action taken by the respondent was taken at the direction of a superior officer. In the second place,

in my view it would be immaterial if it had been done by direction of a superior officer. In the third place, the line of authorities cited by the respondent do not stand for the proposition that in a contempt proceeding a government official is not personally liable. They stand for the proposition that in an action for damages or for an injunction the officer is not personally liable. The court in *Lyon* against *Sawyer* clearly rejected the claim that that line of cases apply to a contempt matter. So I think the matter of damages which will compensate Mr. Yanish is properly before the Court and the respondent is liable. [6]

* * * * *

Mr. McMurray: First, your Honor, I will ask the Court to take judicial notice of the records of the case in this Court and in the Court of Appeals and the records of the Supreme Court of the United States. In both cases, the habeas corpus action which was number 13785 in the records——

The Court: That is the habeas corpus matter.

Mr. McMurray: That is the habeas corpus case.

The Court: That was the one that was dismissed as moot.

Mr. McMurray: That is right, your Honor. The actions were combined for argument up to the time when that case was dismissed as moot. The other case, 13836——

The Court: Which one was that?

Mr. MacMurray: That was the contempt matter in the Court of Appeals.

The Court: That is the one that was remanded back.

Mr. McMurray: That is the one that was remanded back. In the Supreme Court that matter has no regular official number. It was decided by Mr. Justice Douglas in chambers and the copy of the decision which was furnished to us bears no number. It has a space for a number and it is blank. I could offer for the Court's convenience a printed copy of the decision of [11] Mr. Justice Douglas on the application for bail pending appeal.

The Court: That is not recorded.

Mr. McMurray: That is recorded in the Supreme Court Reporter but not in the official reports of the Court. Apparently, your Honor, the decisions of individual justices in chambers are not ever reported in the official reporter but they are reported in the Supreme Court Reports.

The Court: All right.

Mr. McMurray: In the Lawyer's Edition. The matters which I ask your Honor to take judicial notice of include the motions that were made in these actions for bail pending appeal, which was denied here, denied in the Court of Appeals, and granted by Mr. Justice Douglas.

I will call Mr. Yanish as the first witness.

NAT YANISH

called as a witness on his own behalf and being first duly sworn testified as follows:

Direct Examination

Mr. McMurray: Mr. Yanish, you are the plaintiff and the petitioner in this case, are you not?

A. I am.

Q. On March 17, 1953 were you taken into custody by officers of the Immigration and Naturalization Service in San Francisco? A. Yes. [12]

Q. When you were taken into custody where were you, Mr. Yanish?

A. In the offices of my attorneys at 240 Montgomery.

Q. You were present at the time when I as your attorney telephoned to Mr. Barber, is that right? A. That is right.

Q. And told him that you were there and that you would not post the bond or surrender to him, is that correct?

A. Will you restate that again, please?

Q. You were present, were you not, when I telephoned to Mr. Barber and told him that you were there in my offices, that you would not post the bond which he had demanded that you post, and that you would not surrender to him?

Mr. Collett: I object, if the Court please. I think that that is all hearsay as far as this witness is concerned.

The Court: I will permit that answer. Do you expect to put on some testimony, Mr. Collett?

(Testimony of Nat Yanish.)

Mr. Collett: I at the moment do not expect to.

The Court: I would think you should. Give a little thought to it. Go ahead.

A. Yes.

Mr. McMurray: It was following that conversation that officers of the Immigration Service appeared in my office and arrested you and took you to the Immigration Service headquarters on Sansome Street in San Francisco, is that correct?

A. They took me to the Sansome Street prison, yes. [13]

Q. Mr. Yanish, when you were taken there what occurred immediately after you were taken into the detention quarters of the service?

A. The agents were about to book me. They received word that Stan Olson, one of the immigration chiefs there, wanted to see me before I was booked. I was then taken down by the immigration agents, down to Mr. Olson's offices where Mr. Olson asked me if I wanted to sign the agreement to post new bail. I stated to him that my attorneys had made my position clear. He tried in several ways to get me to state that I would sign, post a new bail.

Q. Will you tell us what he said as near as you remember and what you said to him?

A. When I repeatedly stated my attorneys had made my position clear, he said, "If that is the case, you will rot in this place until you do post new bail."

Q. What occurred immediately after that?

A. After he threatened that I would rot in the

(Testimony of Nat Yanish.)

prison there until I posted new bail, he turned to the immigration agents and said, "Take him away," at which point I was taken upstairs again, finger printed, mugged, booked, frisked, and thrown into one of their cells on Sansome Street.

Q. You were kept in that cell then, were you, from March 17 until what date?

A. Until May 27. [14]

Q. Were you in the same cell at all times?

A. Yes.

Q. Would you describe that cell?

A. It is a long cell, about the length of this courtroom. The windows are all barred.

The Court: For the record might we get a stipulation as to the length of the courtroom? I do not know myself what it is.

Mr. McMurray: 50 ft.?

The Court: Approximately 50 ft., counsel.

Mr. Colett: I would say so, 50 or 60 ft.

The Witness: Double tiered, metal bunks.

Mr. McMurray: How many of those bunks were there?

A. Pardon me?

Q. How many of those double bunks were there?

A. I think there were about twenty to the best of my recollection.

Q. What other accommodations were there in the room?

A. There were two small tables and about four chairs, old chairs. At the other end of the cell there

(Testimony of Nat Yanish.)

was some old benches available that were very seldom dragged in to be used.

Q. Where there any sanitary facilities connected with the cell?

A. Yes, there were two rooms, one that had two shower stalls in them, and a large basin for washing clothes, and the other small room had two or three toilets and a couple of wash basins. [15]

Q. And those were connected directly with the cell, were they? A. Yes.

Q. How many men occupied that cell with you?

A. Well, to the best of my recollection they came and went. People were brought in, bailed out, and there was a large turnover. In the 70 days I was there I would estimate there were several hundred people in that little cell, but at one time the maximum—these were all mostly Europeans in there, but at one time I think the maximum amount of people that were there were, I would say about 30 or 35. I just don't recall exactly.

Q. What was the minimum number?

A. It was pretty close to the maximum. However, the number of people in there hovered around that figure.

Q. When you say this was a cell, you have reference to the fact that the windows were barred, is that right? A. Yes.

Q. Was the door locked?

A. The doors were locked most of the time.

Q. Were you confined to that cell during the

(Testimony of Nat Yanish.)

greater part of each day and each night you were there? A. Practically all the time.

Q. Would you describe for us the routine that you went through there in an ordinary day in that cell? You would be [16] sleeping in one of these double bunks, is that right? A. Yes.

Q. What time did the day begin there?

A. I think it was about 5:30 in the morning when the guard would waken us.

Q. How would he awaken you.

A. He would shout, "Get up. Time to get up." He would unlock the door, walk in, and wake us up, call us.

Q. Then you would get up and dress, I suppose, and go to breakfast, is that right?

A. That is right.

Q. About what time was breakfast?

A. Well, it varied, but usually it was around 7 o'clock in the morning. It varied with the number of prisoners they had. Sometimes they would have mass round ups of people in the community—Santa Clara Valley, the Sacramento Valley, the Bay Area. They would bring in large numbers, at which time our meal hours varied. But as a rule during the so-called normal hours there we would have breakfast about 7 o'clock in the morning. [17]

* * * * *

Mr. McMurray: Tell us what you had for breakfast as a general thing.

A. Usually we would get a little cold cereal with skimmed milk, some cold watery coffee, I think it

(Testimony of Nat Yanish.)

was. Hard to tell whether it was coffee or tea. And bread.

Q. Did you have fruit?

A. Very, very rarely we would get a dish with a piece of dried fruit on it or canned fruit.

Q. You say you had bread also?

A. Yes. You could get all the bread that you wanted there.

Q. And butter?

A. No, no butter to my recollection. There might have been possibly on Easter morning I think we got some buttered toast or something, and on an occasional Sunday we might have had something like that. It was not the kind of breakfast I eat at home.

Q. After breakfast what would happen then?

A. We would be taken back and locked up again in the cell.

Q. What was the next regular event on the day's schedule?

A. About 11:30 in the morning the door would be unlocked and we would be led out to lunch.

Q. What did your lunch ordinarily consist of?

A. As a rule I think we—it was hard to—I know the first couple of weeks I couldn't look at the lunch too closely, [18] so I do not have too clear a recollection as to what was on that tin on which everything was dumped. The mess kit——

Q. You were served in cafeteria style?

Mr. Collett: I ask that that answer be stricken as not responsive to the question.

(Testimony of Nat Yanish.)

The Court: Motion denied.

The Witness: It is responsive in the sense that I am trying to think of what we were served.

Mr. McMurray: You were served in cafeteria style, were you?

A. Yes, we were lined up and held our mess kit out, and the trusties there would slop the stuff on the mess kit, and when we were to get this mess kit full of the slop, then they would throw a couple of pieces of bread on top of it.

Q. Do you remember what type of food there was? Did you get meat?

A. No, the meat that we did get was normally all chopped in real fine gravy.

Q. Did you get meat every day?

A. No, no, very seldom. I don't recall, but very seldom, and usually it was in this chopped up style, for example hash style, but, you don't even get as much meat in the hash there as you do on Third and Howard. It was very skimpy. The proteins there were practically nonexistent, although occasionally it would appear in one form or another and one amount or [19] another.

Mr. Collett: I will move that the answer be stricken as conclusions and opinions. He can state what he received.

The Court: I will permit the answer to stand.

Mr. McMurray: Q. What did you receive by way of vegetables at lunch time? Let me broaden my question and ask you to direct your answer to

(Testimony of Nat Yanish.)

lunch and to dinner also. Did you receive any vegetables?

A. Mostly potatoes in one form or another—potato salad, boiled potatoes, and on Sundays we would get two or three fried potatoes. Occasionally some vegetable like spinach, or something else would appear out of a can. I suppose it was healthy to eat, but it was served so unpalatably that we usually left it.

Q. Is it a fair statement that you usually had some vegetable other than potatoes with your meals?

A. Well, yes, I would say possibly something appeared on the mess kit. If you dug into the mess kit you would usually find something in one form or another.

Mr. Collett: I am going to object to that. There is no time. These are all general observations. There is nothing to be identified at any time except the place, and I ask that it all be stricken.

The Court: Motion denied.

Mr. McMurray: Q. When you had been served with this [20] food on the mess kit where did you eat it?

A. There were long tables in the mess hall where we grabbed a place and ate, with guards on either end of the table.

Q. With guards on either end?

A. With guards on either end and one in the hallway.

Q. When you finished lunch what happened then?

(Testimony of Nat Yanish.)

A. We were ordered back into our cells and locked up again.

Q. When you traveled from your cell into the mess room or from the mess room into the cell how did you travel? Did you just walk along the hall or did you have to go up and down elevators?

A. Yes, there was one flight of steps that we walked up.

Q. Were there any guards accompanying you?

A. No, but they were stationed along the hall ways so that on either end, as the prisoners marched down the hall and up the stairs, there were plenty of guards there in and about.

A. After you were locked up again after lunch, was there any other regular routine before dinner or did you just remain there until dinner time?

A. No, the usual procedure was to be locked up until dinner time. Of course, it varied. About once a week we would be allowed out to go to the laundry and get our linen, then sometimes the door would be unlocked, and we would be permitted to go into the library, were we would be permitted to browse around the very skimpy, meager supply of books there, select a [21] book, and go back to the cell, and twice a week we would be permitted visitors.

Q. Were you given any opportunity for exercise?

A. Irregularly. We were permitted to go upstairs on a concrete patio. No equipment, sun beating down on you when there was sun, and the wind—the Sansome Street-Montgomery Street wind

(Testimony of Nat Yanish.)

would scoot in there, and most of the prisoners could not stay there very long. But we were permitted theoretically to stay there a couple of hours. About 20 minutes would be the most we could take. There were no benches, no protection from the elements, and so you just marched up on to the concrete patio and there you were.

Q. Where is this patio located?

A. I think it is on the 14th or 15th floor for the men.

Q. While you were out there did you have an opportunity to engage in games?

A. No, we were not permitted to carry any balls up there, the theory being that if a ball would fall down 15 flights of stairs on Sansome Street, somebody may be walking out of 630 Sansome Street and a ball might hit them on the head. But some of the ingenious prisoners would wrap up a piece of paper, put some string around it, and manufacture a ball and it would not last very long. But for a few minutes we would be able to toss it around. No recruits for major league baseball developed at 630 Sansome.

Q. You did not have to stay, I gather, until the end of the two hour period?

A. No, that is one punishment they did not require.

Q. When the exercise period was over there you would go back to your cell again, is that right?

A. When we had enough of the elements up there, when we were exhausted, we came down, which in my case was in about 10 or 15 minutes.

(Testimony of Nat Yanish.)

Q. After that, I suppose, you were taken in the usual manner to dinner, is that right?

A. Yes, the door would be unlocked and we were marched out to dinner.

Q. After dinner you would again be returned to your cell? A. That is right.

Q. Was there any activity provided in the evening or did you just stay there in your cell?

A. Well, we just stayed there in the cell. However, at one time some of the prisoners got together and pooled some money and were able to rent an old television set, and once a month we had a collection in the cell and were able to keep up the payments, the rental on it. * * * * *

Q. Was there any regular light-out time or anything of that [23] sort?

A. I think about 10 o'clock the lights went out.

Q. And then you retired for the night?

A. We were supposed to retire for the night, yes.

Q. If you wanted to write or read or something of that sort were you able to continue it after light-out?

A. No, not unless you wanted to go into the toilet and sit down on a bowl. There was a small light that was permitted to be on all night there.

Q. What was the state of your general health when you went into the Sansome Street jail?

A. Well, I think it was all right.

Q. During the course of your stay there was

(Testimony of Nat Yanish.)

there any change or modification in the condition of your health?

A. Well, there were some indications of a change.

Q. Did you have some complaints about your health?

A. Yes, I had to go to the Marine Hospital. They took me out to the Marine Hospital in the prison van once to have my stomach examined.

Q. Did you get an examination out there?

A. I got a very cursory examination.

Q. Describe what occurred, please.

A. Well, I was brought into a doctor's office. He was a marine physician. I found out by the fact that he had his marine clothes hanging in view there. He was reading an Examiner [24] at his desk when I was brought in.

Q. You mean the newspaper?

A. Yes. He said, "What is your trouble?", without raising his eyes from the newspaper.

I advised him I had trouble with—I had a little ache in my stomach.

He said, "Take your shirt and coat off and I will examine you."

And so I did. I started to take it off. He came over just about the time I pulled my shirt off, dug a couple of fingers in my stomach, and said, "There is nothing wrong with you. You just have a nervous stomach," and prescribed some pills.

Q. Was that the extent of the examination?

Mr. Collett: If the Court please, I am going to object. There is no time fixed.

(Testimony of Nat Yanish.)

The Witness: It is on the record in the Immigration Department.

Mr. McMurray: Just a minute, Mr. Yanish. Just let me do all the arguing.

Mr. Collett: No foundation laid.

The Court: Overruled.

Mr. McMurray: Q. Was that the extent of the examination that you had. A. Yes. [25]

Q. During the course of your stay——

A. Excuse me. I would like to say something about the pills, if I may.

The Court: Q. About what?

A. About the pills that were given me. At the pharmacy the woman advised me not to take them unless I absolutely had to and said by all means never to take more than one because they were so potent that they might create me more difficulty than my original ache.

Q. Where was the pharmacy?

A. In the Marine Hospital.

Q. Did you take those pills?

A. No, I never took a pill, not after the admonition from the pharmacist.

Q. During the course of your stay there in the Sansome Street jail did you weight change in any way?

A. Yes, I lost quite a number of pounds.

Q. About how many pounds?

A. I think it was about twenty.

Q. During this incarceration you retained attorneys, did you not? A. Yes.

(Testimony of Nat Yanish.)

Q. You authorized those attorneys to take all steps necessary to secure your release, is that right?

A. That is right. [26]

Q. Without requiring you, that is, to post the bond which had been demanded of you?

A. That is right.

Q. Did you have conferences with your attorneys while you were in jail? A. Very few.

Q. On those occasions where and under what circumstances did you have your conferences?

A. Well, not under the usual circumstances, at the Immigration Department. I was required to hold my conferences with my attorneys in a special little cubicle near Olson's office.

Q. Describe the cubicle.

A. It was a small room, a very small room, glass enclosed, I think it was.

Q. During your conferences with your attorneys was there any other persons than the attorneys and yourself present?

A. The first time, the first conference the guard sat down right with us, and when my attorney protested quite vehemently, the guard was finally ordered to sit outside of the room.

Q. He sat immediately outside of this glass enclosed cubicle, is that right? A. Yes.

Q. Were you given all the time necessary to confer with your attorneys?

A. No. During one instance one of my attorneys was threatened [27] that he would be carried out bodily if he did not leave when Stan Olsen ordered

(Testimony of Nat Yanish.)

him to leave, although the attorney protested that he still had a few minutes more of consulting with me.

Mr. Collett: I will ask that that answer be stricken. If there was any conversation let him state the conversation.

The Court: I do not see how that is material, what the attorney was told.

Mr. McMurray: No, I do not think it is. The point I was interested in is that the conference was cut off.

Q. On that occasion had you completed your conference with the attorney?

A. No, that is right.

Q. Did you have other conversations with Mr. Olsen, Stan Olsen, after the first one which you have described, when you were admitted, taken into the jail?

A. There was one other discussion we had. I was ordered down to his office and was told that the attorneys were coming to see me and I was ushered into his office presumably to wait for the appearance of my attorneys, and for about five minutes before the appearance of my attorneys, or before I was informed that my attorneys had arrived, Mr. Olsen again broached the subject of me posting this new bond or the alternative of rotting there until I did. [28]

* * * * *

Mr. McMurray: Q. During the course of your stay there did you have any visitors?

(Testimony of Nat Yanish.)

A. Yes.

Q. Are you married, Mr. Yanish?

A. Yes.

Q. Your wife is living? A. Yes.

Q. During that period of incarceration did she come to visit you? A. Yes.

Q. Under what circumstances did you see her?

A. We were ushered into a cage so that seeing—the term “seeing” is not an accurate description.

* * * * * [29]

Mr. McMurray: Q. Will you describe this room or cage?

A. It is all steel mesh, wire mesh on three sides, from the floor up to the ceiling, and I suppose you could call it a room, but instead of lumber it was all wire mesh and it was so fine that you could hardly see your visitor. You would have to peer right up against the wire to see anyone.

Q. You would be on one side and the visitor on the other, is that right?

A. That is right.

Q. Could you touch, kiss, hug your wife, for example, when she came to see you?

A. No, it was impossible.

Q. Were you alone in there with Mrs. Yanish?

A. No. During regular visiting hours there would be as many as sixty or seventy in that small cage trying to talk. [30]

Q. About how long was the side of the cage on which the prisoners were?

A. I would say maybe 15 to 20 feet long.

(Testimony of Nat Yanish.)

Q. And about how wide?

A. And about 10 feet, approximately 10 feet wide.

Q. There was a corresponding portion on the other side of the wire mesh where the visitors were, was that right? A. That is right.

Q. You mean there might be as many as 60 people on one side of that mesh at one time?

A. There have been more. There have been more than 60 at times.

Q. Were you permitted to see your wife under any other circumstances down there?

A. No, not at any time.

Q. Did you have other visitors? A. Yes.

Q. Were your other visitors presented in the same way?

A. That is right, except my attorneys.

Q. Were you allowed these visitors on certain days of the week? A. That is right.

Q. Were visitors free to visit you only on those days? A. That is right.

Q. That is those were the only days on which you saw any [31] visitors?

A. That is right.

Q. When the time came for your release, when you were released from that jail, did you receive certain items which were given to you by Mr. Olson? A. Yes.

Q. What were those items?

A. Well, a number of—one was procedures of

(Testimony of Nat Yanish.)

the International Longshoremen and Warehousemen's Union Conference that he had withheld.

The Court: Q. A publication, you mean?

A. Yes, it was a publication of the procedures of the International Longshoremen and Warehousemen's Union Conference that he did not permit me to receive.

Mr. McMurray: Q. In general what was the nature of this material?

Mr. Collett: Objection on the ground of immateriality.

The Court: What is the materiality of what he got when he left there, counsel?

Mr. McMurray: Your Honor, I intend to show by these questions that during the time he was there his mail was interfered with and withheld from him, mail and other material sent to him or brought to him, and at the end of his incarceration he was given a tremendous bundle of mail, including publications of various sorts which had been addressed to him [32] and brought to him in the jail in the regular course of the United States mail, but which had not been delivered to him. It seems to me, your Honor, that that is one of the aspects of this incarceration which should be brought to the attention of the Court.

The Court: Q. You received when you left certain mail which had not been delivered to you while you were there, is that right?

A. That is right, a large pile of it.

Q. A large pile of mail?

(Testimony of Nat Yanish.)

A. Yes, including, for example a magazine that my wife purchased at 630 Sansome Street.

Q. How many pieces of mail would you estimate you received when you left?

A. It was a bundle wrapped up that was—I would say about 30 inches one way and about 18 inches in depth. It was full of letters and magazines and books and periodicals.

The Court: All right.

Mr. McMurray: Q. What is your occupation, Mr. Yanish?

A. I work for a newspaper, a labor newspaper here in San Francisco.

Q. Were you employed on that same newspaper at the time you were arrested and put in jail?

A. I was employed at the time, yes.

Q. What was the name of that newspaper? [33]

A. Daily People's World.

Q. Did you receive copies of that newspaper during your stay in the jail?

A. The first few days the paper came through and then it suddenly was terminated. Copies of the newspaper were included in the mail that was held up by Olson.

Q. When you wanted to write a letter while you were there was it possible for you to mail a letter?

A. Yes, provided I left it unsealed and left it in a box where the guards would seal the mail and then forward it. I paid the postage.

Q. You were instructed, were you, that no mail

(Testimony of Nat Yanish.)

was to be sent out unless it was deposited in this box and left unsealed?

A. That is right. [34]

* * * * *

Mr. McMurray: Q. Mr. Yanish, as your attorneys in this case you employed the firm of Gladstein, Andersen and Leonard, is that correct?

A. That is right.

Q. From the time of the filing of the petition of habeas corpus you also employed the firm of Dreyfus and McTernan? A. Right.

Q. And for presentation of your case to Mr. Justice Douglas of the Supreme Court you employed the firm of Forer and Rein in Washington, D. C.? A. Right. [35]

* * * * *

Cross Examination

Mr. Collett: On the 16th of March were you in the office [36] of your attorney, Mr. Yanish?

A. Yes.

Q. Did he inform you that the deportation order had become final on that day?

A. That was not the subject of discussion.

Q. The question is were you informed?

A. I don't think so.

Q. I would like an answer.

A. I am quite certain we were not.

Q. You say that you were not informed on March 16th that the deportation order had become final?

The Court: Is that true or not?

(Testimony of Nat Yanish.)

A. I think that is true.

Q. What?

A. That I didn't know, I wasn't informed on the 16th.

Mr. Collett: Q. When were you informed?

A. To the best of my recollection I think I learned about it while I was in Sansome Street.

Q. When?

A. Possibly a week or two after that date.

* * * * *

Mr. Collett: Q. What arrangements did you make thereafter [37] to leave the United States?

Mr. McMurray: I will object to that as irrelevant and immaterial? Not involved in this controversy at all.

The Court: I will permit the answer.

A. Under the requirements of the McCarran Act I filed a request with the Soviet Embassy to be admitted. [38]

* * * * *

Mr. Collett: Q. When did you sign that document?

Mr. McMurray: It has been asked and answered, your Honor.

The Court: I think it has been, counsel.

Mr. Collett: In light of the answer, a document requesting something of the Soviet government, I would like the answer to that question: When that document was signed. [40]

The Court: Q. Can you give an answer to when that was signed?

(Testimony of Nat Yanish.)

A. I don't know the exact date. It was sometime during my incarceration at 630 Sansome Street, which would be between March 17th and May 27th. To the best of my recollection it was either the latter part of March or during April, but I just can't swear to it because time in there does not have the same meaning that it does out here. It does not make the same impression on you. [41]

* * * * *

Mr. Collett: Q. With regard to the document pertaining to the Soviet Government, have you made a request to anyone at Immigration with regard to such documents?

Mr. McMurray: Object to it as incompetent and immaterial. [43]

* * * * *

Mr. Collett: If the Court please, there was an objection made to the question. Is your Honor sustaining it?

The Court: I will sustain the objection.

* * * * *

Q. You did not leave the United States from the time that [44] you knew the deportation was final and that you were to leave the United States, did you?

A. Would you restate that question?

The Court: Q. Have you been out of the country at any time since March 17, 1953?

A. No, I have not. This in answer to your question, sir. [45]

* * * * *

(Testimony of Nat Yanish.)

Mr. Collett: Q. When you first went in what happened? Not generally, but what happened?

A. I was brought into a little office, I think it was on the fourteenth floor or thirteenth, one of those floors at which time, and within a minute or two, I was immediately let out again by the guards.

Q. Where did you go?

A. I was taken down one floor.

Q. To where?

A. To one of the offices. I think it was Mr. Olson's.

Q. Do you recognize Mr. Olson?

A. Yes, I do. He is sitting in the courtroom.

Q. Is there any doubt that it was Mr. Olson's office?

A. It is pretty definite. I am quite certain it was, yes.

Q. Was he there?

A. Yes, I am quite sure he was.

Q. Was anyone else there?

A. The guard—no, the guard was told to stay outside.

Q. Were you and Mr. Olson alone in the room?

A. To the best of my recollection we were.

Q. What was the conversation?

A. The conversation was to the effect that, "Are you going to post this new bond?"

I answered I had made my position clear. My position had been made clear by my attorney. [48]

The conversation continued on along that line for

(Testimony of Nat Yanish.)

about a minute or two, when an effort was made to get me to agree to post bond.

Mr. Collett: I object to that. I would like him to state the conversation.

The Witness: This is the conversation. You can't put quotes around it because I didn't take notes at the time. I am giving you the conversation to the best of my recollection. At which time I was told, "Well, you will rot in this place until you do."

Mr. Collett: Mr. Olson told you you would rot in the place? A. Yes.

Q. Was that the whole thing that was said, you will rot in this place until you post bail?

A. That is right.

Q. Was that all the conversation?

A. Then the guard was called in and told to take me upstairs again.

Q. You say you were thrown into one of the cells. What do you mean by "thrown"?

A. I was ordered in. I was led in. I was guided, directed.

Q. What did you mean when you told the Court you were thrown into the cell?

A. Exactly what I am saying. I was thrown in. I was not [49] physically or bodily thrown in, but I think counsel will understand the term "thrown." You probably have used it yourself. For example, it was probably meant in the same sense that Mr. Olson said to one of my attorneys that he would throw him out, and possibly Mr. Olson did not mean

(Testimony of Nat Yanish.)

he would bodily throw him out. I meant it in the same sense, I think, that Mr. Olson meant it.

Q. The actual fact is the door was open and you walked into the cell in a perfectly normal manner. Is that right? A. That is right.

Q. You call it a cell. That is the 50 ft. room. You would say about the size of this courtroom?

A. That is right.

Q. The door was opened in a normal manner and you walked into it?

A. The door was unlocked and I was then escorted in.

Q. Did you stay in that room for the entire time that you were there?

A. For the entire time with a few brief interludes, like chow, visitors, occasional library privilege.

Q. That was constantly your sleeping quarters?

A. That is right.

Q. You were not changed to any other room?

A. That is right.

Q. You slept every night in that room for the entire period [50] that you were there, is that right? A. That is right.

Q. How many double bunks were there in the room, do you recall?

A. To the best of my recollection there were around twenty four or something like that, twenty four double tiered, and I think there were around twelve on each side of the room.

Q. Was the room clean?

(Testimony of Nat Yanish.)

A. Yes, after a fashion.

Q. What do you mean by "after a fashion"?

A. Well, it wasn't as spotless as this courtroom, for example. [51]

* * * * *

Mr. McMurray: Your Honor, I have just handed to counsel for his examination certain receipted bills bearing all, except in one instance, the stamp of the Clerk of the United States Court of Appeals for the Ninth Circuit, the "paid" stamp. I do not think it is necessary to put on any testimony to identify them.

Mr. Collett: I think there is, if the Court please. I would like to know who paid them. The bills speak for themselves as far as their being paid. Undoubtedly they were paid. But whether that is an element in this case, I am not going to stipulate that they be admitted in evidence other than to develop the fact that there were certain expenses, but whether it was any expense of this petitioner, you will have to prove it.

Mr. McMurray: Are you through now, counsel? I will offer as evidence in behalf of the plaintiff, the petitioner, your Honor, the following receipted bills on the billhead of the office of the Clerk of the United States Court of Appeals [56] San Francisco. These are uniformly addressed to Messrs. Gladstein, Andersen and Leonard, and they bear the name and number of the case, and each one bears a stamped notation "paid" with the date. The first is the bill for estimated expense of printing

record \$150. That was in action No. 13836, which is the contempt matter, your Honor.

The second is a similar bill for the habeas corpus matter, \$65.

The next is docket fee in the contempt matter, \$25.00.

The next, purporting to be a letter from Paul P. O'Brien, the Clerk, indicating that \$42.04 of the amount paid, the estimated expense of printing both these records, was returned. I have also two bills, receipted bills, for \$10 each for cost bonds on appeal. I will offer them also in evidence.

Mr. Collett: Objection, if the Court please. No foundation laid. Immaterial and irrelevant.

The Court: I think the objection will have to be sustained, counsel.

Mr. McMurray: I am afraid so. Then I have also a bill from the Pernau Walsh Printing Company, stamped "paid" and addressed to Gladstein, Andersen, and Leonard for appellant's opening brief, Yanish against Barber, \$191.43. I will offer that.

Mr. Collett: Same objection.

The Court: Same ruling. [57]

Mr. McMurray: Your Honor, as reluctant as I am to do it, I suppose I can take the stand and testify that this is a bill or receipted bill received by my law firm, which is in my file, or in the file of my law firm, in my custody. I think that will be sufficient identification to offer it. If counsel insists upon it, I will offer to take the stand.

The Court: I take it the position of counsel is

that although the bills were paid by somebody, there is no showing that they were paid by the petitioner.

Mr. McMurray: That may be.

The Court: Isn't that your position?

Mr. Collett: That is right.

Mr. McMurray: They were certainly paid by the petitioner's attorneys on his behalf, and that is the way these bills are ordinarily paid.

The Court: Did the petitioner ever pay them to you?

Mr. McMurray: I believe so, your Honor.

The Court: That is the point.

Mr. McMurray: I am not able to state. If he has not paid them, he certainly owes them, so I don't see——

The Court: Maybe he does not. Maybe somebody else paid it to you. Maybe he did not have anything to do with it at all, and if so, they would not be any element here which you could contend for.

Mr. McMurray: I take it from that the testimony which [58] I said I could give on this would not be acceptable.

The Court: It would not be any more helpful, unless you are able to say who paid them. If you are able to say that, of course——

Mr. McMurray: I can certainly say that the firm of Gladstein, Andersen, and Leonard paid this bill.

The Court: That still is not the point. Who paid Gladstein, Andersen, and Leonard for it? Did he pay them?

Mr. McMurray: I do not know the answer to that, your Honor. I do not know whether it has

been paid or whether it has not been paid and who paid it. It is my position that it is immaterial. I would make an offer of proof, then, your Honor, unless your Honor wants me to go through the formality of testifying—as I said I could a moment ago—and your Honor indicated you did not desire that testimony. I will offer to prove by such testimony as I outlined a moment ago by myself that this bill represents the——

The Court: Why don't you make your offer of proof that the firm of Gladstein, Andersen, and Leonard paid these various bills that you are talking about.

Mr. McMurray: I so offer to prove.

Mr. Collett: I object on the same grounds as before.

The Court: I would be inclined to think as a part in the link of proof they would be able to prove that.

Mr. Collett: But I think they would be able to prove it [59] but it still does not reach the essential element.

The Court: They can't put all their proof on at one time. I think they would be entitled to prove that their firm paid these various bills for briefs, and so forth. Now, whether the defendant paid them is another question. You can't do it all at one time.

Mr. Collett: That may be so, but they have to lay the foundation first before you get to this point.

The Court: I doubt it.

Mr. Collett: I make the objection.

The Court: Subject to your objection will you

stipulate that these bills were paid by the firm of Gladstein, Andersen, and Leonard in these cases indicated by counsel?

Mr. Collett: The receipts speak for themselves. I have no basis for saying they do or they do not. I take it on their face value that they were paid.

The Court: I am going to admit them for such value as they may have, counsel, showing they were paid by the firm of Gladstein, Andersen, and Leonard.

Mr. McMurray: Both the bills for the cost bond on appeal and the bill from Pernau Walsh for the printing.

Mr. Collett: Are you admitting all of them?

The Court: Yes, for such value.

Mr. Collett: Let the record show my objection goes to the entire proof. There is no foundation laid. [60]

(Bills referred to are thereupon received in evidence and marked Plaintiff's Exhibit 1.)

* * * * * [61]

Mr. McMurray: Your Honor, I would ask leave to recall Mr. Yanish for one very brief bit of testimony. This is not in the manner of redirect examination, your Honor, but just to cover one matter which was omitted inadvertently on his direct testimony.

NAT YANISH

was recalled as witness, and having been previously duly sworn testified as follows:

Direct Examination—(Continued)

Q. (By Mr. McMurray): Mr. Yanish, you have

(Testimony of Nat Yanish.)

testified that you retained certain attorneys whom you named to effect your release from imprisonment. Do you recall your testimony on that this morning? A. Yes.

Q. Have you paid those attorneys? A. Not yet.

Q. Have you been presented with the bill by those attorneys? A. Not yet.

Q. What arrangement did you have with those attorneys regarding the payment of their fees?

A. Well, my understanding was that the fee would be determined at the end of these hearings, and that I was given to understand that I would be able to get a return of my fees from Mr. Barber.

Mr. Collett: I ask that that be stricken, if the Court please, as purely hearsay, conclusion and opinion.

The Court: I think that last is a conclusion, counsel. "I was given to understand" may go out.

The Witness: I was told.

Mr. McMurray: Q. Your arrangements with your attorneys, the arrangements that you have just testified to, were made in a conversation between yourself and one of your attorneys, is that right?

A. That is right.

Q. At what time was that with relation to these events, do you recall?

Mr. Collett: I object, if the Court please. No foundation laid as to what conversation is being talked about now.

The Court: I think it has been covered. He said he has not received any bill from his attorneys.

(Testimony of Nat Yanish.)

Mr. McMurray: If it is clear, your Honor, I will leave it at that. That is all I have, unless counsel has some cross examination on that.

Mr. Collett: No.

Mr. McMurray: Your Honor, that is the petitioner's case. I should like at some time, perhaps after the respondent's case, to have an opportunity to discuss the services that were involved and to state to the Court what I think would be a reasonable fee for the services that were involved. [63]

The Court: Do you desire to do that now?

Mr. McMurray: I may as well. The services here involved included, first of all, the filing of the petition that Barber be held in contempt of court and argument of that in court, of course. It was when Mr. Yanish was jailed nevertheless; the filing of and the argument on the petition for habeas corpus and the appealing of both of those cases to the Court of Appeals. In the Court of Appeals there was argument.

Mr. Collett: If the Court please, do I understand that counsel is now testifying? Is he to be under oath or is he just making a statement?

The Court: It is a statement of what the attorney's fees consist of. I think he can do that without taking the stand, Mr. Collett, what services they rendered in connection with this matter.

Mr. McMurray: In the Court of Appeals, your Honor, in addition to arguing the main case, there was also a motion for bail pending appeal, which was argued there, and then a motion for bail pend-

ing appeal, which was presented to and argued before Mr. Justice Douglas, so that the services of the attorneys covered a great many months, numerous motions, one major brief, the briefing and argument of the motions on bail, and the motion of the respondent that the case be dismissed as moot in the Court of Appeals. All of this will be apparent, your Honor, from the records of the cases in those courts. [64] I think, your Honor, a modest fee for the services involved here, which dealt with some difficult questions of law, your Honor, would be \$7,500 that would be an adequate but modest fee.

Mr. Collett: Objection is made on the same grounds as was made with regard to the other bill that your Honor admitted in evidence, subject to objection.

The Court: Proceed. * * * * *

BRUCE G. BARBER

was called as a witness on behalf of the defendant, being first duly sworn testified as follows:

Direct Examination

By the Clerk: Q. Will you state your name for the record? A. Bruce G. Barber.

Q. (By Mr. Collett): What is your official capacity, Mr. Barber?

A. District Director of the Immigration and Naturalization Service for the San Francisco District.

Q. Are you present District Director?

(Testimony of Bruce G. Barber.)

A. I am, sir.

Q. In January, 1953 were you the District Director?
A. Yes, sir. [65]

Q. And ever since from 1953 to the present time?

A. That is correct.

Q. How long have you been District Director?

A. Since 1950, I believe, November 1950.

Q. Are you familiar with the case of Nat Yanish?
A. In a general way I am, yes.

Q. You knew the proceedings that occurred with regard to raising the bond and the imposition of conditions in that bond which were presented to Judge Lemmon by way of a petition for an injunction?

A. Yes. I will have to answer again, though, it was in a general way. I did not know the specific details.

Q. In January and February 1953 you knew that an injunction had been issued in the action?

A. Yes.

Q. This action by Judge Lemmon pursuant to the conditions of a bond?
A. Yes.

Q. And that was under the law as it existed, was it not, prior to the enactment and the effective date of the McCarran Act on December 24, 1952?

A. Yes.

Q. The McCarran Act became effective on December 24, 1952?
A. Yes.

Q. That is known as Public Law 414? [66]

A. Yes.

Q. Subsequent to the effective date of the Mc-

(Testimony of Bruce G. Barber.)

Carran Act did you receive any directive or instructions from the Attorney General with regard to subversive cases that were released under delivery bonds prior to the effective date of Public Law 414?

A. Yes, we did.

Mr. McMurray: Objected to, your Honor. Even if he had obtained instructions, and even if those instructions were the cause or immediate reason for his acting, that in no way excuses the act on which he has been found in contempt of court.

The Court: The objection is overruled.

Mr. Collett: Will you stipulate he received such instructions in January 1953?

Mr. McMurray: I have no knowledge on the subject. If he testifies it, I am sure that he did.

Mr. Collett: Q. Did you receive instructions under the authority of the Attorney General of the United States with regard to the subversive cases I just mentioned? A. Yes, I did.

Mr. McMurray: Your Honor, I am going to object to that because of the form, when he says "under the authority of the Attorney General." That calls for a conclusion and opinion. I think if he received instructions from the Attorney General he can say so, but when it is put this way, we are getting his interpretation of the authority under which his instructions [67] were received.

The Court: I would think this is a preliminary question. If the answer is yes, I expect you to go in and show what they were.

Mr. Collett: Yes.

(Testimony of Bruce G. Barber.)

Q. Did you answer the question?

A. Yes.

Mr. Collett: Will you mark this for identification?

(A document was marked respondent's Exhibit A for identification.)

Mr. Collett: I will show you respondent's Exhibit A. Can you identify that document?

A. Yes, I can. That is the instruction I received from our head office in Washington.

Q. From whom was that instruction received?

A. That was received from the Commissioner of the Immigration and Naturalization Service stationed in Washington.

Q. Do you recall when you received the document? A. It was shortly after January 14th.

Q. Was it in accordance with this directive that you proceeded to consider the case of Nat Yanish as regards the bond upon which he was then released?

A. Yes, that is correct; except that there was a court proceeding pending, and we did have an officer of our service talk to the Assistant U.S. Attorney, or the U.S. Attorney's Office, [68] as to what our actions should be with respect to the new law and the proceeding.

Q. Was that at your express direction that consultation was had with the Office of the United States Attorney? A. Yes, it was.

Q. Where? In San Francisco?

A. In San Francisco.

Q. With regard to what?

(Testimony of Bruce G. Barber.)

A. Whether we were at liberty to go ahead under that directive in view of the court proceeding. As I recall it, there had been a judgment entered at that time, and the discussion involved whether we should go ahead or whether we should have some further action taken on it, and our instructions from the United States Attorney's Office was in view of the order of the court dismissing the other action, as I recall it, and in view of the change of the law it would be proper for us to proceed.

Q. What happened thereafter?

A. I received a call thereafter, I think—and my recollection is a little bit hazy, but the record will show what took place I think. We had to serve the notice on the alien to post a new bond with certain conditions in the bond that had not previously been required in a bond in our understanding of the law. I had some conversation relating to this matter with present counsel, Mr. McMurray. He said that he would have [69] the alien in his office, and that we could there apprehend the alien. I can't remember now just why he did not bring the alien to the office. He did notify me, however, in substance that they would not sign the bond. They were contesting it and wanted to test its legality.

The Court: Mr. Collett, nothing has been offered yet in evidence.

Mr. Collett: I will offer it in evidence at this time.

Mr. McMurray: Objected to, your Honor, on the

(Testimony of Bruce G. Barber.)

ground that it is incompetent, irrelevant and immaterial.

The Court: The objection may be overruled. It may be admitted. May I see it? Go ahead.

Mr. Collett: Q. The conversation you mentioned in regard to Mr. McMurray—when was that? What date, do you recall?

A. I don't recall the specific date, but it was in connection with the posting of a new bond and would have been just preliminary to the time that Mr. Yanish was turned over to our custody.

Q. You knew that a proceeding was instituted in this court with regard to contempt as to the endeavor to impose conditions upon the communications that had occurred prior to March 16th?

A. I am not sure, Mr. Collett, that I clearly understand your question.

Q. Did you know that on March 16th there was a proceeding instituted in this court? [70]

A. I knew that there was a proceeding instituted in the court. I am not sure of the dates.

Q. You knew that that proceeding was concerned with the question of contempt or injunction?

A. Yes.

Q. As to the imposition of any conditions under Public Law 414? A. Yes.

Q. Was any action taken with regard to the detention of Mr. Yanish prior to the ruling of this court, Judge Murphy, in that proceeding?

A. It is my recollection that no action was taken until after the ruling by the court.

(Testimony of Bruce G. Barber.)

Q. It was after the court had dismissed that petition that the detention of the petitioner herein, Mr. Yanish, was sought and obtained, is that correct? A. Yes.

Q. In the meantime, did you know that his status had changed from one who was not subject to deportation, because of the absence of a final order, to one subject to deportation because of the existence of a final order? A. Oh yes, yes.

Q. That occurred when? Do you know of your own knowledge?

A. That occurred prior to the time that he was taken into custody. In other words we had a warrant of arrest, which was [71] issued for the purpose of according the alien a hearing to show cause why he should not be deported, and the warrant of deportation is issued directing his deportation from the United States.

Q. That final order of deportation had been entered prior to March 16th, 1952?

A. That is correct.

Q. You are familiar, are you not, with the conditions and the operation of the Immigration and Naturalization orders at 630 Sansome Street?

A. Yes, I am.

Q. Do you personally supervise the various matters pertaining to quarters, food, and the well being of all the prisoners who are detained?

A. I do not personally supervise it. I have general supervision. We do have a steward in charge of the culinary work, preparing the meals, and then

(Testimony of Bruce G. Barber.)

over him is our officer who is in charge of the guards, and over above him is Mr. Stanley Olson. I go into the detention quarters, not at regular times. I have gone in many times at night, on the weekend—there is no set time when I go through them. I have also taken people through. I took the Commonwealth Club through the quarters not too long ago.

Q. There are standard procedures with regard to inspection, cleanliness, and the establishment of proper menus for food and conditions under which the detainees eat and are served food, [72] is that right?

A. Yes, that is correct. There is a menu prepared and those menus are forwarded to our central office, and they must meet certain standards as to calories, so forth. Also the meals and the purchasing of goods to prepare the meals are very carefully allotted. For instance, with Chinese we have to buy a certain kind of rice. We have certain races in the detention quarters that can't eat pork. So we purchase our food to meet the requirements of the people we may have in the detention facility.

Q. Do you know who it was in the United States Attorney's Office whom you consulted with regard to the effectiveness of Public Law 414?

A. I personally do not. I believe, however, that Mort Lavine, who is one of our officers, consulted with Bonsall. I believe Mr. Bonsall was then the deputy in charge of our work.

Q. It was after the consultation that the decision was made to proceed, to impose conditions of bond,

(Testimony of Bruce G. Barber.)

and the letter of communication was sent to Mr. Yanish with respect thereto?

A. That is correct.

Mr. Collett: That is all.

If the the Court please, one matter I would like to call to your Honor's attention, which is in the transcript of the appeal. There is a stipulation which was entered into for whatever value it may have. It was in the habeas corpus appeal and is dated April 6th, after the return to the order to show cause [73] had been filed on March 20th. That is on page 15 and 16 of the transcript in No. 13785, in the Court of Appeals, and that is No. 32630 in this court;

"It is hereby stipulated by and between the parties and by their respective counsel that (1) it is a fact that on March 11, 1953, the Board of Immigration Appeals made its order confirming the order of the Assistant Commissioner dated May 7, 1952 directing the deportation of Nat Yanish from the United States and (2) That in the light of the foregoing the allegations of paragraph III of the respondent's return to the order to show cause herein may be deemed to read,

" 'denies the allegations of paragraph III and firmly asserts the petitioner is lawfully detained pursuant to authority contained in Section 242 (a) and 242 (c) of Public Law 414'."

That was signed by all counsel for the petitioner and the United States Attorney.

(Testimony of Bruce G. Barber.)

Cross Examination

Mr. McMurray: Q. Mr. Barber, do you recall the occasion when Mr. Yanish was arrested by your officers in March of 1953? A. Yes.

Q. That occurred immediately after your telephone conversation or one of your telephone conversations with me, did it not?

A. I think we had some conversation the day before the apprehension took place. [74]

Q. On that occasion, on the occasion of the telephone conversation, you were told by me that Mr. Yanish would be in my office but that he would not surrender. If you wanted to arrest him you would find him there.

A. I think that is correct.

Q. Mr. Barber, when did you receive notice that the deportation order had become final?

A. I don't remember the specific date.

Q. When you received it did you communicate to your attorneys?

A. I don't remember the specific procedure. I will have to testify as to what we generally do. Where there is a court action pending, the matter would be cleared by whatever officer would ordinarily handle the deportation matter before any action is taken with our attorneys who represented us before the courts, or the United States Attorney's Office, I should say.

Q. When you have a matter in which there is some court action pending and additional material pertaining to that man, the person involved there,

(Testimony of Bruce G. Barber.)

is received from the Immigration Service in Washington, don't you have that forwarded—isn't it standard procedure to have that forwarded to the attorney who is representing you or the Service in court?

A. Are you referring to the instruction here that we got specifically?

Q. No, I am referring to the standard procedure, if there is [75] one, that you follow when you have an action pending in court regarding somebody whom you are seeking to deport——

A. Yes.

Q. And some further material bearing on his case is received from your Washington headquarters isn't it your standard practice to have that material referred to your attorneys?

A. Anything that would be in the nature of an instruction goes to all employees concerned, and anything that bore on a case they were handling under normal procedure would be referred to them.

Q. That is referred by them, you mean by your attorneys?

A. Yes, or to, because he was concerned with it. Most of our instructions have general distribution and some of them have special distribution.

Q. When you received notice that the order of deportation in Mr. Yanish's case had become final was that communicated to your attorneys?

A. That would be first ordinarily, and then I do not know what was done in this case, but that would be indicated to Mr. Stan Olson, who is in charge

(Testimony of Bruce G. Barber.)

of the deportation and detention, and then if there was any matter in the file indicating an action before the court, he would then contact our attorneys.

Q. Do you know when you became aware that the deportation order had become final? [76]

A. No specifically.

Q. When you received the word that the deportation order had become final what action, if any, did you take to notify Mr. Yanish or his attorneys that you consider there had been a change in his status?

A. I am not just sure, but in view of that instruction there was a little change in our procedure.

Q. By that instruction are referring to respondent's Exhibit A, the instruction that dated January 14, 1953?

A. Yes, I am. If you will notice, that instruction requires us to give notice to the alien that he is required to come in and post a new bond, including in the bond the provisions that are referred to therein.

Q. After you had received notice that the deportation order in Mr. Yanish's case had become final, what steps did you take, if any, to notify him that he now occupied a different status than he had before? A. I don't know specifically.

Q. Did you receive any other instructions, Mr. Barber, upon which you acted in requiring Mr. Yanish to post a bond, any other instructions than respondent's Exhibit A.

A. These are the instructions on which I acted.

(Testimony of Bruce G. Barber.)

Q. And no others?

A. There are other instructions as to procedural matters that are not contained in the regulations or not contained in [77-78] these instructions of this kind, but they are mere information for our officers, which is a procedural thing as to how we would accomplish certain things. They generally are confidential instructions.

Q. In other words this was the only instruction or authority upon which you relied for, first of all, requiring the posting of a new bond and, second, for requiring or ordering Mr. Yanish's imprisonment, is that right?

A. That would be essentially right, but, of course, you could not say we ignored the law. This is based upon the statute and the regulations under the law. This is our directive to act, and this instruction is based, at least we believe it is based on the law and the regulations.

Q. When you received this respondent's Exhibit A, this instruction, did you prepare or have prepared a list of cases to which you thought it applicable?

A. We have the men who are handling these cases directed to go ahead and carry it out and they themselves would have to get the cases together. They may be in different stages of progress. Some of them may have been in subversive units under investigation. Some of them may have been in the detention and deportation unit and it would be necessary of course, to get the file together to see what

(Testimony of Bruce G. Barber.)

the status of it was. You will notice in the last paragraph they specifically say that is not to apply to cases in which there is a great—where the alien [79] has been released on court bond. So there had to be a review of each file and each individual case.

Q. At that time, Mr. Barber, did you make the decision or was the decision made in Washington about which cases the instruction applied to?

A. Well, instruction is a general standard we would all be guided by all over the country. You will notice there they mention a number of cases, all of which cases, were not in this district.

Q. Did you make the decision which case this was to be applied to or was that decision made in Washington or elsewhere?

A. That is a difficult question to answer because Washington laid down the standards. We were only to determine whether or not a particular case came within that standard.

Q. You did make that latter determination, did you?

A. Yes.

Q. Did you consult with Washington about it before making it? That is, in the case of Mr. Yanish?

A. I can't recall that there was any conversation concerning it.

Q. Did you request information from Washington or from the United States Attorney here before you took the first step in applying this to Mr. Yanish?

A. Well, I think you ought to be more specific.

(Testimony of Bruce G. Barber.)

You would help me, at least, in giving you an answer as to what step you [80] may mean. There were numerous steps necessary to be taken. We had to read the instruction and try to analyze the instruction, and then we had to decide just how big a job it was going to be. We had a number of these cases. Yanish was only one of many.

Q. Before you first applied it to Mr. Yanish by requiring of him that he appear and post a bond, did you ask instruction or advice from Washington?

A. I can't recall that I did. I took it that this was my instruction, the exhibit that you have there.

Q. You did not ask for any particular instruction with regard to Yanish?

A. I can't recall of any.

Q. Did you request any advice from the United States Attorney here with regard to the propriety of proceeding or applying this directive to Yanish before you took the first step against him?

A. It is my recollection that we did and I have so testified. [81]

* * * * *

Mr. McMurray: Q. Did you at any time seek the advice or direction of the Immigration Service on the application of this instruction, Respondent's Exhibit A, to a case in which you personally had been ordered by a district court not to do the thing that this directive told you to do?

Mr. Collett: I will object on the grounds of obscurity as to what the Immigration Service is and what is meant by the Immigration Service.

(Testimony of Bruce G. Barber.)

The Court: You mean the Commissioner of Immigration in Washington?

Mr. McMurray: Yes. May I modify my question to specify the Commissioner of Immigration?

A. I do not recall specifically discussing this particular case. I have discussed that instruction on numerous occasions [85] with the central office. My conversation probably would not have been with the Commissioner but would have been with Mr. Davaney, who would be the man I would normally talk with about the interpretation of an instruction.

Q. Did you have any such consultation with Mr. Davaney?

A. I have testified before, and I can't now, I simply can't clear up in my mind as to whether I did or not in this specific case.

Q. After your oral statement to me or to somebody in our office that Mr. Yanish would be required to surrender unless he posted a new bond, do you recall that the existence of this injunction was pointed out to you when you said that you would nevertheless go ahead? Do you recall that?

A. Counsel, I never made any such statement and I would not make such a statement. I have always listened to the court. The court is the one that gives us the interpretation of these laws.

Q. Is it your testimony that when you applied this instruction to Mr. Yanish you did not know of the existence of the injunction granted by Judge Lemmon?

(Testimony of Bruce G. Barber.)

Mr. Collett: Objection, if the Court please. He can ask the questions directly.

The Court: He may answer that question.

The Witness: I think I testified, counsel——

The Court: Just answer yes or no. [86]

(The question read.)

Mr. Collett: He has testified already several times that he did.

The Court: Just answer.

The Witness: I am a little——

The Court: Read the question again.

(Question reread.)

A. No, that is not my testimony. [87]

* * * * *

Q. At the time that this oral and this written demand were made, you knew that the injunction granted by Judge Lemmon against you prohibited your demanding any such bond, did you not?

A. That is not my recollection.

Q. I take it you did not before making the demand read the injunction?

A. Well, I can't recall whether I specifically read the injunction. I think I did. At least our representatives read it for me and informed me about it.

Q. And you therefore interpreted that injunction as not prohibiting nor demanding a bond different from the one that was then in effect except as to the face amount, did you?

A. No, I did not. I did not so testify. What I testified to was that I understood there was noth-

(Testimony of Bruce G. Barber.)

ing pending in the court to prevent us going ahead with the instruction that we had from our central office at the time Nat Yanish was taken into custody.

Q. Mr. Barber, I will say again, my questions are directed toward the time that you demanded that Yanish post a new bond.

A. In order to answer that I would have to see the file and see when we made the demand. I can't recall whether we sent it out by letter or whether it was an oral conversation with you. [89]

Q. At any rate the fact is undisputed apparently, is it, Mr. Barber, that at the time that you made the demand upon Yanish that he post a new bond, you did not know that Judge Lemmon's injunction prohibited that? A. No.

Mr. Collett: I object to that question, if the Court please, as being argumentative, and it is hearsay and calls for a conclusion as to what the legal effect one way or the other as a matter of prohibition.

The Court: I think he can answer it if he understands the question.

The Witness: No, I did not.

Mr. McMurray: That is all.

Redirect Examination

Mr. Collett: Q. Who handled most of the affairs with regard to the class of individuals concerned with the directive Exhibit A in your office.

(Testimony of Bruce G. Barber.)

A. I believe Mr. Stan Olson would have handled the majority of those details.

Q. Did he also handle the matter of Mr. Yanish, the petitioner here, the detail?

A. No, I am thinking of two things; one, the administrative procedure and the other the court procedure. Of course, the court procedure would be handled by whoever was the then acting law officer with the United States Attorney's Office, but the administrative matter would have been handled by Mr. Olson, but [90] these two gentlemen coordinate their work. They must.

Q. With regard to the notice and the taking into detention, the notice to post bond with conditions and taking him into detention, you have testified that at the time he was taken into detention it is your recollection that there were no legal proceedings to prevent it?

A. Yes, that is correct. [91]

* * * * *

Q. In other words, you were satisfied at the time that Mr. Yanish was taken into detention that there was no proceedings then pending which would prevent or interfere with your taking him in into detention, is that right?

A. That is correct.

Mr. Collett: That is all.

Mr. McMurray: Just one question.

Q. Mr. Barber, are you an attorney?

A. I have an L.L.B. degree.

(Testimony of Bruce G. Barber.)

The Court: What do you mean by that? Have you been admitted to practice?

A. No, I have not, your Honor.

Mr. McMurray: No further questions.

The Court: Mr. Barber, have you read the decision in this [92] matter, Yanish vs. Barber, the Circuit Court of Appeals decision?

A. I think I did at the time it came down, your Honor.

Q. It came down a couple of months ago, in March of this year. Did you read it then?

A. I am quite sure I did. I try to read all of these decisions. I take them home in my briefcase, and if I have time, I read them.

Q. Do you recall this language in the opinion of the circuit court which states, "We feel constrained to observe that the appropriate procedure for appellant—" that would be you—"to pursue as a public officer would have been to move for a modification or a vacation of the injunction. It was not for him any more than it would be for a private individual in like circumstances to decide that an injunction order running against him had been rendered nugatory by subsequent legislation. His course should be to obey it unless and until set aside in proceedings brought for that purpose." Do you recall that language?

A. Yes, your Honor. I am sorry I did not remember it before, but I have been working on this Wetback thing day and night for the last few years.

(Testimony of Bruce G. Barber.)

I did not recall it until you read it to me. I not only read it but I studied it.

Q. You understand that that is the law in reference to a situation of this kind, do you not?

A. I certainly do. [93]

The Court: That is all.

* * * * *

STAN OLSON

was called as witness on behalf of the respondent and being first duly sworn testified as follows:

The Witness: If the Court will excuse me, I have a cold and I may be coughing here.

The Clerk: Q. Will you state your name for the record?

A. Stan Olson.

Direct Examination

Mr. Collett: Q. What is your official capacity?

The Court: If there are some brief matters you may want to go into, Mr. Collett, you may do so. I do not know that you have to go into the entire conduct of the jail.

Mr. Collett: No, I am not going into the conduct of the jail, just introductory matter pertaining to and supplementing what Mr. Barber has testified.

Q. What is your official capacity?

A. I am the chief of the detention, deportation and parole section. [94]

Q. Of what?

(Testimony of Stan Olson.)

A. Of the Immigration and Naturalization Service of San Francisco.

Q. That is your present occupation. How long have you been in such capacity?

A. For approximately 18 months.

Q. In all of 1953 did you serve in that capacity? A. Yes, sir.

Q. During the months of February and March 1953? A. Yes, sir.

Q. Are you familiar with the case of Nat Yanish and the Immigration files and the records?

A. Yes, sir.

Q. Do you have any recollection of March 17, 1953, when Mr. Yanish was taken into detention?

A. Yes, sir.

Q. Did he come to your office at that time?

A. Yes, sir.

Q. Did you have a conversation?

A. I believe so.

Q. Who was present?

A. To the best of my recollection now there was either one or two of the investigators that had taken Mr. Yanish into custody, and I believe that Attorney Brodsky was there, although I am not sure on that point. [95]

Q. Did you have any conversation with Mr. Yanish? A. Yes.

Q. Will you state it to the best of your recollection?

A. At that time we had prepared a new bond containing certain conditions pertaining to his asso-

(Testimony of Stan Olson.)

ciates, traveling, and so forth, and when the investigators brought him to my office he was asked—informed of the conditions and asked if he would sign the conditions pertaining to his release; that there was some conversation, I think then that he would not, and he was then taken into the detention quarters. It was very brief, to the best of my recollection, probably not more than two or three minutes.

Q. Did you at that time or any other time tell him that he would rot in that place until he posted bail? A. No, sir.

Q. Do you have any knowledge or recollection of the events preceding March 17 with regard to notice that may have been sent to Mr. Yanish?

A. Yes, sir.

Q. What is your recollection of the first notice that may have been sent?

A. I would like to explain just a little bit. Over a period of the last six years, I think, I have had, in one capacity or another, dealings in this particular case. So sometimes the events would kind of intermingle. However, I try to remember [96] each condition as it comes up. I am trying to the best of my recollection to remember only those particular incidents that occurred in March 1953. Now, what was the question?

Q. Well, I will withdraw the question with that statement. Did you know that there was an injunction issued by Judge Lemmon with regard to the imposition of conditions on bond?

(Testimony of Stan Olson.)

A. May I explain a little bit? There have been so many court actions taken that I was not sure what was there, but I knew there was some court action keeping us from proceeding with his deportation.

Q. Was there any consultation instituted by you with the United States Attorney or any other superior of yours with regard to imposing conditions in the bond? A. Yes, sir.

Q. What is your knowledge on that?

A. I called Mr. Lavine before any action was taken with respect to requiring him to appear at our office to post a new bond. I knew that Mr. Lavine was familiar with the pending court proceedings at that time, and that was taken—I don't know—quite some time—just how long before we called him in I don't recall, but it was a few days, a couple of weeks, and so forth.

Q. Was that prior to any notice of any kind, either oral or written to Mr. Yanish?

A. Yes, sir, because I had received this directive from our [97] central office, and it is part of my function to carry an order out.

Q. What are you referring to?

A. Exhibit A. We have several cases, subversive cases, that are pending that fall within that instruction there. The Yanish case is only one of them, and when it came up to the time of determining what action should be taken in the Yanish case under that directive, I did talk with Mort

(Testimony of Stan Olson.)

Lavine pursuant to the pending court action at that time.

Q. Was it your understanding——

Mr. McMurray: I will object to leading questions here. I think you can ask him what his understanding was.

The Court: I think it is leading, counsel. Endeavor to avoid that.

Mr. Collett: I do not want to resort to any leading questions. The question I have in mind was not leading. That was only leading to the question.

Q. Were the notices that were sent to Mr. Yanish initiated by yourself? A. Yes, sir.

Q. Do you recall when the first notice was sent?

A. It was, I would estimate, probably 10 days, two weeks, something—three weeks maybe—before he was finally taken into custody.

Q. Was it oral or written? [98]

A. To the best of my recollection the first notice was a written notice, sent registered mail to both Yanish and counsel.

Q. Was the consultation with the United States Attorney's Office regarding the propriety of that notice before the notice was sent or after?

A. Before.

Q. It was before it was sent. How long before, do you know?

A. No, Mr. Collett, because we had so many cases that were pending right at that time that just exactly when we took up the Yanish case I do not recall.

(Testimony of Stan Olson.)

Q. Do you know when you received notice of the entry of the final notice of deportation?

A. Yes, sir.

Q. When was that?

A. I received it by wire from our central office on March 11.

Mr. Collett: That is all.

Cross Examination

Mr. McMurray: Q. Do you have a clear recollection, Mr. Olson, now that you discussed the question of requiring a new bond with Mr. Lavine before you sent out any notice to him?

A. There was no question of it in my mind, because of the instruction that we had received from our central office I had to take some action on those types of cases, and before I took any action on Yanish's case, I discussed not once but I believe several times with Mort Lavine, not only here, by telephone, [99] but in my own office.

Q. Do you recall that there was some court proceeding pending which prevented you from carrying out the deportation?

A. I wanted to find out whether I could proceed in the Yanish case under that directive without interfering with any court action that might then be pending.

Q. You understood that there was something pending at that time?

A. I did not know what was pending, that is the reason I talked with Mr. Lavine about it.

(Testimony of Stan Olson.)

Q. You asked him if there was something pending? A. Yes.

Q. What did he say?

A. I don't recall just what—what I asked him was whether or not we could now proceed under this directive, that there was no impediment by any court in permitting us to proceed, and the ultimate answer was yes, we could proceed. [100]

* * * * *

[Endorsed]: Filed November 8, 1954.

[Endorsed]: No. 14518. United States Court of Appeals for the Ninth Circuit. Nat Yanish, Appellant, vs. Bruce G. Barber, District Director, Immigration and Naturalization Service, Appellee. Transcript of Record. Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed: September 17, 1954.

/s/ PAUL P. O'BRIEN,
Clerk of the United States Court of Appeals for
the Ninth Circuit.

In the United States Court of Appeals
for the Ninth Circuit

No. 14518

NAT YANISH, Appellant,
vs.

BRUCE G. BARBER, etc., Appellee.

STATEMENT OF POINTS TO BE RELIED
UPON ON APPEAL

On the within appeal, appellant herein will rely upon the following point:

The Court erred in holding that although the respondent was in contempt of court, no fine should be levied against him nor other redress given appellant as the victim of respondent's contemptuous acts.

Dated: November 3, 1954.

GLADSTEIN, ANDERSEN,
LEONARD & SIBBETT,
BENJAMIN DREYFUS,
FRANCIS T. McTERNAN,

/s/ By LLOYD E. McMURRAY,
Attorneys for Appellant

Acknowledgment of Service attached.

[Endorsed]: Filed November 5, 1954. Paul P.
O'Brien, Clerk.